# Case 7:14-cv-00711-CS Document 1 Filed 02/04/14 Page 1 of 22

UNITED STATES DISTRICT COURT					
SOUTHERN DISTRICT OF NEW YORK	- <b></b>	tile ma			
	<b>x</b> DKT#:		- <b>3 √ − 1</b>	-	(9 to <b>1640</b>
TIMOTHY MANIRE,		A Ab	71	1	

Plaintiff,

**COMPLAINT** 

- against -

JURY TRIAL DEMANDED

LOBEL'S RESTAURANT GROUP, LLC, and DAVID LOBEL,

**VIA ECF** 

Defendants.

Plaintiff, TIMOTHY MANIRE (hereinafter "Plaintiff"), by his attorneys, LAW OFFICES OF TREYVUS & KONOSKI, P.C., hereby files this Complaint against the Defendants, LOBEL'S RESTURANT GROUP, LLC. (hereinafter "LOBEL'S") and DAVID LOBEL (collectively, "Defendants"), and respectfully alleges as follows:

#### **PRELIMINARY STATEMENT**

- 1. Plaintiff, TIMOTHY MANIRE, alleges, pursuant to the Fair Labor Standards Act, as ameneded, 29 U.S.C. §§ 201 et. seq. ("FLSA"), that he is entitled to recover from Defendants: (1) unpaid overtime; (2) unpaid wages and unpaid minimum wages; (3) liquidated damages; and (4) attorneys' fees and costs.
- Plaintiff further alleges that, pursuant to the New York Labor Law, he is entitled to recover from Defendants: (1) unpaid overtime; (2) unpaid wages and unpaid minimum wages;
   liquidated damages; and (4) attorneys' fees and costs.

#### JURISDICTION AND VENUE

- 3. This Court has Jurisdiction over this controversy pursuant to 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, 1337 and 1343, and has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.
  - 4. Venue is proper in the Southern District pursuant to 28 U.S.C. § 1391.

#### **JURY DEMAND**

5. Plaintiff respectfully demands a trial by jury on all issues in this matter.

#### **PARTIES**

- 6. Plaintiff, TIMOTHY MANIRE, is a citizen of the United States, and at all relevant times a resident of the State of New York.
- 7. Defendant, LOBEL'S, was and is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with a business location at 46 Belle Fair Road, Rye Brook, NY, 10573.
  - 8. Upon information and belief, Defendant, DAVID LOBEL, is the Chairman of LOBEL'S.
- 9. Upon information and belief, Defendant, DAVID LOBEL, is the Chief Executive Officer of LOBEL'S CHECK CASHING CORP.
- 10. The Defendant, DAVID LOBEL, is directly responsible for hiring, firing, supervising, and paying employees of LOBEL'S, including the Plaintiff.
- 11. Plaintiff was employed by Defendants and worked from the business location at 46 Belle Fair Road, Rye Brook, NY 10573.
- 12. At all relevant times, LOBEL'S was and continues to be an "enterprise engaged in commerce" within the meaning of the FLSA.
- 13. At all relevant times, the work performed by Plaintiff, TIMOTHY MANIRE, was directly essential to the business operated by LOBEL'S.

- 14. At all relevant times, Defendants knowingly and willfully failed to pay TIMOTHY MANIRE his lawfully earned wages and overtime wages in direct contravention of the FLSA and the New York Labor Law.
- 15. Plaintiff has fulfilled all conditions precedent to the institution of this action and/or such conditions have been waived.

#### **STATEMENT OF FACTS**

- 16. At all relevant times, Defendants maintained and operated a Restaurant.
- 17. Defendant employs manual laborers, such as Plaintiff, to perform work that is necessary and integral to the services Defendants provide to the parties they contract with.
  - 18. The rate of pay of the Plaintiff was set by the defendant.
  - 19. The Plaintiff was employed by the Defendants.
- 20. Plaintiff's work was performed in the normal course of the Defendants' business and was integrated into the business of the Defendants.
- 21. The work performed by Plaintiff required little skill and no capital investment. His duties did not include managerial responsibilities or the exercise of independent judgement.
- 22. During the time period that Plaintiff was employed by Defendant, his maximum rate of pay was \$15.00 per hour.
- 23. For the pay periods set forth in the attached paystubs, the Plaintiff was not paid his appropriate wages for overtime hours he worked. (See Exhibit A).
- 24. The Plaintiff was not paid his proper overtime wages from June of 2013 through October of 2013, as set forth in the attached paystubs. (See Exhibit A).
  - 25. Subject to further discovery, it is estimated that the Plaintiff worked approximately 71.34

overtime hours for the period of June of 2013 through October of 2013, as set forth in the attached paystubs. (See Exhibit A).

- 26. It is estimated that the Plaintiff is owed \$535.05, plus double damages, for overtime wages he was not paid; the exact amount of hours and wages are to be determined at trial.
- 27. DAVID LOBEL, as the Chairman of LOBEL'S, maintains operation control over the employees of LOBEL'S. DAVID LOBEL provides oversight and guidance to employees. DAVID LOBEL disciplines employees. DAVID LOBEL makes hiring and firing decisions of all employees at the work place. DAVID LOBEL authorizes and approves the payment of salary. DAVID LOBEL is directly responsible for the non-payment of wages and over-time of employees of LOBEL'S, including the Plaintiff. DAVID LOBEL is personally liable for the causes of action set forth herein.
- 28. Throughout all relevant time periods, upon information and belief, and during the course of Plaintiff's own employment, while Defendants employed Plaintiff the Defendants failed to maintain accurate and sufficient time records.

#### FIRST CLAIM FOR RELIEF: FAIR LABOR STANDARDS ACT

- 29. Plaintiff, on behalf of himself and all the Collective Action Members, reallege and incorporate by reference paragraphs 1 through 28 as if they were set fourth again herein.
- 30. At all relevant times, Defendants have been and continue to be, employers engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).
- 31. At all relevant times, Defendants employed, and/or continue to employ, Plaintiff within the meaning of the FLSA.

- 32. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of \$500,000.
- 33. At all relevant times, the Defendants have a policy and practice of refusing to pay overtime compensation to the Plaintiff for hours worked in excess of forty hours per workweek.
- 34. At all relevant times, the Defendants have a policy and practice of refusing to pay full minimum wages to the Plaintiff for all hours worked over forty during their workweek.
- 35. At all relevant times, the Defendants failed to pay full minimum wages to the Plaintiff for work performed from June of 2013 to October of 2013.
- 36. As a result of the Defendants' willful failure to compensate the Plaintiff at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, the Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 207(a)(1) and 215(a).
- 37. As a result of the Defendants' failure to properly record, report, credit and/or compensate the Plaintiff the Defendants have failed to make, keep and preserve records with respect to the Plaintiff and each of its employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 211(c) and 215(a).
- 38. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning 29 U.S.C. § 255(a).
- 39. Due to the Defendants' FLSA violations, Plaintiff is entitled to recover from the Defendants his unpaid overtime compensation, unpaid minimum wages, an additional amount equal as liquidated damages, additional liquidated damages for unreasonably delayed payment of

wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

### SECOND CLAIM FOR RELIEF: <u>NEW YORK LABOR LAW</u>

- 40. Plaintiff, on behalf of himself and the members of the Class, reallege and incorporate by reference paragraphs 1 through 39 as if they were set fourth again herein.
- 41. At all relevant times, Plaintiff was employed by the Defendants within the meaning of the New York Labor Law, §§ 2 and 651.
- 42. Defendants willfully violated Plaintiff's rights by failing to pay him overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of the New York Labor Law and its regulations.
- 43. Defendants willfully violated Plaintiff's rights by failing to pay him an additional hour of pay for each hour worked in excess of ten in one day, in violation of the New York Labor Law and its regulations.
- 44. Due to the Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants his unpaid overtime compensation, unpaid minimum wages, unpaid spread of hours, an additional amount equal as liquidated damages, additional liquidated damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- a. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law.
- b. An injunction against the Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- An award of unpaid overtime compensation and unpaid minimum wages due under the FLSA and the New York Labor Law;
- d. An award of liquidated and/or punitive damages as a result of the Defendant's willful failure to pay overtime compensation and minimum wages under the FLSA and the New York Labor Law;
- e. An award of prejudgment and post-judgment interest;
- f. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- g. Such other and further relief as this Court deems just and proper.

Dated: New York, New York January 30, 2014

By:

BRYAN KONOSKI (BK 2325)

Treyvus & Konoski, P.C. Attorney(s) for the Plaintiff 305 Broadway, 14<sup>th</sup> Floor New York, NY 10007

(212) 897-5832

<u>Defendants' Addresses</u>: LOBEL'S RESTAURANT GROUP, LLC, and DAVID LOBEL 46 Belle Fair Road Rye Brook, NY 10573

## **EXHIBIT A**

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11 Page 16 of 22 Regular Overtime Earnings State: 6 Local: 0 Social Security Number: Taxeble Marital Status: Examptions/Allowances: Federal: 6 Gross Pay Federal Income Social Security Medicare New York State Income New York City R Local Net Pay New York voluntary disability Child support 1 Voluntary Deductions Statutory Deductions CompanyCode Number Page RI/OB7 20673951 50102109 1 of 1 LOBELS RESTAURANT GROUP LLC 46 BELLE FAIR ROAD RYE BROOK, NY 10573 15.0000 13 H Tax Override:
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Timothy Manire 150 West 225th Street Apartment 14E Bronx, NY 10463

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Case 7:14-cv-00711-CS Document 1 Filed 02/04/14 Page 20 of 22 Eamings Regular Overtime State: 2 Local: 0 Social Security Number: Taxable Marital Status: Exemptions/Allowances: Federal: 2 Gross Pay Federal income
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Period Starting: Period Ending: Pay Date:

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Timothy Manire 150 West 225th Street Apartment 14E Bronx, NY 10463

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